



DUBLIN
CALIFORNIA

THE NEW
AMERICAN
BACKYARD

Date: April 22, 2016

Project Title: Request for Qualifications – On-Call Contract Planning Services

Description: The City of Dublin invites firms to submit qualifications to provide contract planning services.

The City of Dublin Community Development Departments seeks to update our on-call contract planning resources and establish a new list of qualified consultants to provide services on an as needed basis. The City is requesting firms to submit qualifications to provide on-call contract services to the Planning Division in the following Service Categories: A) contract planning services; B) landscape design review; C) architectural design review; D) arboricultural services; E) acoustical analysis; F) biological resource analysis and documentation; and G) environmental analysis and documentation. Please refer to the attached Request for Qualifications for complete details and submittal requirements.

Proposal Due: Wednesday, May 18, 2016 at 12 noon.

Interviews: Week of June 6, 2016 (Tentative)

Contract Awarded: June 28, 2016 (Tentative)

Contact: Jeff Baker
Assistant Community Development Director
City of Dublin
100 Civic Plaza
Dublin, CA 94568
925-833-6610
jeff.baker@dublin.ca.gov

City Council
925.833.6650

City Manager
925.833.6650

Community Development
925.833.6610

Economic Development
925.833.6650

Finance/IT
925.833.6640

Fire Prevention
925.833.6606

Human Resources
925.833.6605

Parks & Community Services
925.833.6645

Police
925.833.6670

Public Works
925.833.6630

100 Civic Plaza
Dublin, CA 94568
P 925.833.6650
F 925.833.6651
www.dublin.ca.gov

The City of Dublin reserves the right to reject any and all proposals.

Request for Qualifications

On-Call Planning Services

City of Dublin Community Development Department

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1. Introduction

The City of Dublin is located at the intersection of Highways I-580 and I-680 in eastern Alameda County. The City was incorporated in 1982 and has a current population of approximately 53,000 people. Over the past twenty years Dublin has gone through a rapid growth cycle, with much of that growth focused on the undeveloped land in eastern Dublin. The City is also experiencing redevelopment/revitalization of the commercial core, and transit oriented development around the City's two Bay Area Rapid Transit (BART) stations. The City has successfully utilized on-call contract services to augment staff in order to help manage fluctuations in workload.

The Planning Division is looking to update its on-call contract planning resources and establish a new list of qualified consultants to provide services on an as needed basis. The City is requesting firms to submit qualifications to provide on-call contract services to the Planning Division in the following Service Categories: A) contract planning services; B) landscape design review; C) architectural design review; D) arboricultural services; E) acoustical analysis; F) biological resource analysis and documentation; and G) environmental analysis and documentation.

2. Scope of Services

Selected firms could provide on-call contract planning services as requested by the City during the 3-year term of the agreement. These services shall be provided in a prompt, professional, and workmanlike manner in accordance with the standards of the planning profession. All work, unless otherwise specified, shall be performed on a time and materials basis, and completed to the satisfaction of the Assistant Community Development Director. Work shall be completed within the time periods allocated, or as mutually agreed to at the beginning of each assignment.

Firms desiring consideration in more than one Service Category shall provide a separate response to this RFQ for each individual category.

Service Categories

A. Contract Planning Services

1. Serve as an extension of staff and function as the project manager on assigned planning projects while protecting the interests of the City and its residents throughout the life of each assigned development project. This could include managing projects from the planning entitlement phase through construction.
2. Perform technical review and evaluation of a wide variety of land development, subdivision, building permit and use permit applications.
3. Process development applications in accordance with local policies and ordinances, make recommendations, and enforce mitigation monitoring and compliance with City ordinances.
4. Prepare written project analyses and reports including identifying appropriate land use policy, design, fiscal issues and environmental requirements.
5. Conduct site inspections to determine if projects are in compliance with laws, regulations, conditions of approval, ordinances, and make recommendations regarding changes.
6. Prepare and update various planning documents such as the City's General

Plan, specific plans, ordinances, resolutions, codes, and related planning studies and reports.

7. Provide technical advice and make clear, well organized presentations on-site, off-site and at day and evening meetings.
8. Manage sub-consultants in the preparation of project analysis, including environmental consultants.
9. Communicate effectively both orally and in written form.
10. Exhibit a strong commitment to customer service and interactive team participation.

B. Landscape Design Review

1. Review and evaluate conceptual landscape plans and provide constructive design critique of those plans.
2. Perform technical review of landscape construction documents.
3. Review landscape plans for conformance with applicable local and state regulations, including the Water Efficient Landscape Ordinance.
4. Review landscape plans in coordination with site and civil improvements plans.
5. Write memorandums summarizing plan review comments.
6. Attend coordination meetings, as necessary, with staff and the applicant in the office and on the project site.
7. Perform field inspections of projects under construction.
8. Communicate effectively both orally and in written form.
9. Exhibit a strong commitment to customer service and interactive team participation.

C. Architectural Design Review

1. Review and evaluate conceptual architectural plans and provide constructive design critique of those plans.
2. Perform technical review of construction documents.
3. Write memorandums summarizing plan review comments.
4. Attend coordination meetings, as necessary, with staff and the applicant in the office and on the project site.
5. Communicate effectively both orally and in written form.
6. Exhibit a strong commitment to customer service and interactive team participation.

D. Arboricultural Services

1. Provide a full range of arboricultural services.
2. Perform technical review and evaluation of land development applications for impacts to existing trees, plants and shrubs.
3. Conduct field inspections and provide technical expertise, opinions and feedback regarding site specific issues related to existing trees, plants and shrubs.

4. Prepare written analyses and reports that identify impacts, propose measures to mitigate and/or alternatives to reduce/eliminate those impacts, as appropriate.
5. Prepare written analysis and reports that help decision makers understand the development impacts to existing trees, plants and shrubs.
6. Attend coordination meetings, as necessary, with staff and the applicant in the office and on the project site.
7. Monitor development projects for compliance with approved development plans and mitigation measures to reduce/eliminate impacts to existing trees, plants and shrubs.
8. Communicate effectively both orally and in written form.
9. Exhibit a strong commitment to customer service and interactive team participation.

E. Acoustical Analysis

1. Provide a full range of technical expertise in the field of acoustical analysis.
2. Conduct field inspections and provide technical expertise, opinions and feedback regarding site specific issues related to project specific noise impacts.
3. Perform technical review and evaluation of land development and use permit applications for noise impacts.
4. Prepare written analyses and reports that identify impacts, propose measures to mitigate and/or alternatives to reduce/eliminate those impacts, as appropriate.
5. Prepare written analysis and reports that help decision makers understand the noise impacts associated with development and use permit applications.
6. Attend coordination meetings, as necessary, with staff and the applicant in the office and on the project site.
7. Monitor projects for compliance with approved development plans and mitigation measures to reduce/eliminate noise impacts.
8. Communicate effectively both orally and in written form.
9. Exhibit a strong commitment to customer service and interactive team participation.

F. Biological Resource Analysis and Documentation

1. Provide a full range of services in the field of biological resource analysis.
2. Demonstrated experience implementing the California Environmental Quality Act (CEQA).
3. Conduct field inspections and provide technical expertise, opinions and feedback regarding site specific biological resources.
4. Perform technical review and evaluation of land development and use permit applications for impacts to biological resources.
5. Prepare written analyses and reports that identify impacts to biological resources, propose mitigation measures and/or alternatives to reduce/eliminate those impacts, as appropriate.

6. Prepare written analysis and reports that help decision makers understand the impacts to biological resources associated with development and use permit applications.
7. Attend coordination meetings, as necessary, with staff and the applicant in the office and on the project site.
8. Monitor projects for compliance with approved development plans and mitigation measures to reduce/eliminate impacts to biological resources.
9. Communicate effectively both orally and in written form.
10. Exhibit a strong commitment to customer service and interactive team participation.

G. Environmental Analysis and Documentation

1. Demonstrated expertise implementing the California Environmental Quality Act (CEQA) and preparing a variety of different environmental documents, including but not limited to Initial Studies, Negative Declarations, Mitigated Negative Declarations, Addendums, Supplement Environmental Impact Reports, Environmental Impacts Reports, and Mitigation and Monitoring Programs.
2. Prepare clear, concise, legally defensible environmental analysis and documentation in accordance with State CEQA Guidelines and the City of Dublin CEQA Guidelines.
3. Provide a full range of technical studies, as appropriate based on the project, to complete an environmental impact analysis in accordance with CEQA.
4. Prepare CEQA documents that meet the legal requirements, are reader-friendly and allow the City to easily implement the document.
5. Prepare administrative draft documents for internal review, draft documents for public review and comment, response to comments and final documents, including mitigation and monitoring programs.
6. Provide a scope and budget for the preparation of environmental documents in accordance with Attachment A to this RFQ.
7. Provide on-call services in a variety of technical areas related to natural resources in order to assist staff with project implementation, mitigation monitoring, and project review.
8. Attend coordination meetings, as necessary, with staff and the applicant in the office and on the project site.
9. Communicate effectively both orally and in written form.
10. Exhibit a strong commitment to customer service and interactive team participation.

SECTION 3 - SUBMITTAL REQUIREMENTS

Please prepare and organize your submittal based on the requirements provided below. Any other information you would like to include should be placed in a separated section at the back of your submittal. Please note however that the submittal is limited to **10 pages maximum** (excluding resumes), and should be submitted on 8 ½ x 11 paper, in 12-point font. Please submit four copies and a pdf of your proposal **per Service Category**.

1. Enclose a cover letter not to exceed one page per Service Category, describing the firm's interest and commitment to perform on-call planning services. The person authorized by the firm to negotiate a contract with the City of Dublin shall sign the cover letter.
2. State the qualifications and experience of the firm/individual(s). Please emphasize the specific qualifications and experience with engagements of similar scope and complexity.
3. Provide at least three references (names and current phone numbers) from recent work (previous five years) similar to the service categories your firm is interested in providing. Include a brief description of the role associated with the reference, and the role of the respective team member.
4. List key staff members, including identification of the Principal-in-Charge and Project Manager/primary point-of-contact, and applicable licenses and/or certifications.
5. Include an organization chart, including those who may take a role in providing services to the City.
6. Please provide confirmation acknowledging the following conflict of interest provisions:

Conflict of Interest

Proposer agrees that, for the term of this contract, no member, officer or employee of the City of Dublin, or of a public body within Alameda County or member or delegate to the Congress of the United States, during his/her tenure or for one year thereafter, shall have any direct interest in the contracts or any direct or material benefit arising therefrom.

Proposers must provide a list of any potential conflicts of interest in working for the City of Dublin. This must include, but is not limited to, a list of your firm's clients who are the following: Private clients located or operating within the City of Dublin limits, Dublin San Ramon Service District, US Army Camp Parks and/or the County of Alameda, and a brief description of work for these clients. Proposers must also identify any other clients (including public entities) that may pose a potential conflict of interest, as well as a brief description of work you provide to these clients.

This list must include all potential conflicts of interest within the year prior to the release of this RFP as well as current and future commitments to other projects.

Principals and those performing work for City of Dublin may be required to submit a California Fair Political Practices Commission (FPPC) Form 700: Statement of Economic Interests documenting potential financial conflicts of interest. For additional information, proposers should refer to the FPPC website at www.fppc.ca.gov/index.php?id=500.

7. Provide confirmation of your firm's ability to meet the City's standard Services Agreement, including insurance requirements (Attachment B). Exceptions to the Agreement and insurance requirements shall be specifically noted in your submittal along with the reason for the changes. These exceptions will be taken into consideration in evaluating the proposal. *Please note that the City's standard Services Agreement is currently under internal review and subject to change prior to entering into an agreement to provide on-call services.*

SECTION 4 - SELECTION PROCESS

Submittals will be evaluated using the following criteria:

1. Qualifications and specific experience of key project team members.
2. Quality and completeness of the proposal.
3. Experience with engagement of similar scope and complexity.
4. Satisfaction of previous clients.

A subcommittee selected by City Staff will evaluate the submittals provided in response to this RFQ and invite select firms to participate in interviews. The highest rated firms may be invited to negotiate a final agreement, including compensation. If an agreement is not reached, negotiations may be terminated and commenced with the next most qualified firm. The recommendation of the Planning Division will be submitted by the City Council for award of contract to selected firms, and establish a list of on-call consultants to provided planning services on an as needed basis.

The City reserves the right to reject any or all proposals. The City reserves the right to award a contract to the firm(s) that the City feels best meet the requirements of this RFQ and the needs of the City. The City reserves the right to reject any and all proposals prior to execution of an Agreement, with no penalty to the City.

SECTION 5 - SELECTION SCHEDULE

April 22, 2016	Initiated Request for Qualifications
May 18, 2016	Proposals submitted <u>no later than 12:00 noon</u> to: Jeff Baker Assistant Community Development Director City of Dublin 100 Civic Plaza Dublin, CA 94568
June 6, 2016	Interviews the week of June 6, 2016 (Tentative)
June 28, 2016	City Council consideration to award contracts (Tentative)

All questions or other communications regarding this RFQ shall be directed to Jeff Baker at 925-833-6610 or jeff.baker@dublin.ca.gov

ATTACHMENT A

Scope of Environmental Analysis

1. Introduction

A general introduction and description of the proposed approach and methodology shall be provided. The format of the introduction and description of the approach is at the discretion of the consultant, but it should include a short discussion of the intended approach to the project which succinctly demonstrates the consultant's understanding of the EIR process, those impact areas to be studied, and the consultant's ability to successfully address them.

2. Scope of Work

Describe the work program to accomplish the approach described above. The work program shall provide a detailed description of the work to be accomplished. The organization of the specific work activities in the plan of study should be as follows:

TASK:	An overview of a related group of subtasks or activities.
SCHEDULE:	A delivery date for this particular activity or subtask.
COST:	Cost to complete task.
SUPPORT:	Identification of any information, data, and/or assistance required from City Staff to accomplish the task.

This format should be repeated throughout the scope of work until all of the proposed work has been described in detail.

3. Schedule

Describe the time schedule for each proposed task and subtask described in the Scope of Work above. Proposed work periods and completion dates, as well as the anticipated meeting dates should also be identified. The proposed project schedule should be provided in a timeline chart.

The schedule should highlight anticipated public review periods, meeting dates, and key milestones.

4. Personnel, Equipment and Facilities

The proposal shall list all sub-consultants proposed for this project. Include their qualifications and specific responsibilities.

Describe the activities of the designated Project Manager, and lead and supporting personnel. Provide resumes for those named, including their qualifications (education and experience), and their relationship and cost to the proposed project activities. All sub-consultants shall be billed through the lead consultant. The City will require that no personnel changes be made during the project without prior City approval.

ATTACHMENT B

General Provisions from City's Standard Consulting Agreement

CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF DUBLIN AND

THIS AGREEMENT for consulting services is made by and between the City of Dublin ("City") and ("Consultant") as of , 2016.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on , the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed \$, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- For each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person per day and for the billing period and for each applicable project billing code, a brief description of the work and the applicable project billing code, and each reimbursable expense;
- Maximum billing increments shall be quarter hour increments.
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;

- The Consultant's signature.

- 2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.
- 2.3 **Final Payment.** City shall pay the last 10% of the total sum due pursuant to this Agreement within sixty (60) days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.
- 2.4 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.5 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the following fee schedule:
- 2.6 **Reimbursable Expenses.** Reimbursable expenses are specified below, and shall not exceed \$0. Expenses not listed below are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

- 2.9 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to City as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. The additional insured coverage under the Consultant's policy shall be "primary and non-contributory" and will not seek contribution from City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 12. In the event Consultant fails to maintain coverage as required by this Agreement, City at its sole discretion may purchase the coverage required and the cost will be paid by Consultant. Failure to exercise this right shall not constitute a waiver of right to exercise later. Each insurance policy shall include an endorsement providing that it shall not be cancelled, changed, or allowed to lapse

without at least thirty (30) days' prior written notice to City of such cancellation, change, or lapse.

- 4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Consultant shall notify City within 14 days of notification from Consultant's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

4.2 Commercial General and Automobile Liability Insurance.

- 4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.
- 4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001. Automobile coverage shall be at least as broad

as Insurance Services Office Automobile Liability form CA 0001 Code 1 (“any auto”).

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured’s general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Consultant shall notify City within 14 days of notification from Consultant’s insurer if such coverage is suspended, voided or reduced in coverage or in limits.

4.3 Professional Liability Insurance. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals’ errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.

- 4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- 4.3.3 The policy must contain a cross liability or severability of interest clause.
- 4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:
- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
 - c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
 - d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 **All Policies Requirements.**

- 4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- 4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

4.4.3 Subcontractors. Consultant agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Agreement including the Indemnification and Insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by Consultant agree to be bound to Consultant and the City in the same manner and to the same extent as Consultant is bound to the City under the Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the Owner Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The General Contractor shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and will provide proof of compliance to the City.

4.4.4 Variation. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

4.4.5 Deductibles and Self-Insured Retentions. All self-insured retentions (SIR) and/or deductibles must be disclosed to the City for approval and shall not reduce the limits of liability. Policies containing any self-insured retention provision and/or deductibles shall provide or be endorsed to provide that the SIR and/or deductibles may be satisfied by either the named insured or the City.

4.4.6 Excess Insurance. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before City's own insurance or self-insurance shall be called upon to protect City as a named insured.

4.4.7 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of

the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. To the maximum extent allowed by law, Consultant shall indemnify, keep and save harmless the City, and City Councilmembers, officers, agents and employees against any and all suits, claims or actions arising out of any injury to persons or property, including death, that may occur, or that may be alleged to have occurred, in the course of the performance of this Agreement by a negligent act or omission or wrongful misconduct of the Consultant or its employees, subcontractors or agents. Consultant further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses arising therefrom or incurred in connection therewith; and if any judgment be rendered against the City or any of the other individuals enumerated above in any such action, Consultant shall, at its expense, satisfy and discharge the same. Consultant's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Consultant/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and

any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 30 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 8.6.1 Immediately terminate the Agreement;
 - 8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - 8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
 - 8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination

of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

9.2 Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 Venue. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County Alameda or in the United States District Court for the _____ District of California.

10.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 Contract Administration.** This Agreement shall be administered by the City Manager ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 Notices. Any written notice to Consultant shall be sent to:

Any written notice to City shall be sent to:
Jeff Baker
City of Dublin
100 Civic Plaza
Dublin, CA 94568

10.11 Professional Seal. Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.

Seal and Signature of Registered Professional with
report/design responsibility.

10.12 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

CITY OF DUBLIN

CONSULTANT

Chris Foss, City Manager

Attest:

Caroline Soto, City Clerk

(ver.2015)

Approved as to Form:

John Bakker, City Attorney

EXHIBIT A
SCOPE OF SERVICES